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School Finance Litigation: McCleary v. State of
Washington

9-22-2009

**Reporter's Verbatim Report of Proceedings, Tuesday, September
22, 2009, Volume XIII - Sessions 2 and 3 of 4 [Pages 2802-2898]
07-2-02323-2**

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1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR KING COUNTY

3

4	MATHEW and STEPHANIE McCLEARY,)	
	on their own behalf and on)	
5	behalf of KELSEY and CARTER)	
	McCLEARY, their two children in)	SUPREME COURT OF WA
6	Washington's public schools;)	No. 84362-7
	ROBERT and PATTY VENEMA, on their)	
7	own behalf and on behalf of HALIE)	
	and ROBBIE VENEMA, their two)	
8	children in Washington's)	
	public schools; and NETWORK)	
9	FOR EXCELLENCE IN WASHINGTON)	
	SCHOOLS ("NEWS"), a state-wide)	
10	coalition of community groups,)	
	public school districts, and)	
11	education organizations,)	
)	
12	Petitioners,)	KING COUNTY CAUSE
)	No. 07-2-02323-2 SEA
13	vs.)	
)	
14	STATE OF WASHINGTON,)	
)	
15	Respondent.)	

16

17 REPORTER'S VERBATIM REPORT OF PROCEEDINGS

18 --oOo--

19 TUESDAY, SEPTEMBER 22, 2009
20 VOLUME XIII - Sessions 2 and 3 of 4

21 --oOo--

22 Heard before the Honorable John P. Erlick, at King
23 County Courthouse, 516 Third Avenue, Room W-1060,
24 Seattle, Washington.

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1 A P P E A R A N C E S:

2

--oOo--

3

4 THOMAS F. AHEARNE, CHRISTOPHER G. EMCH, and
5 EDMUND W. ROBB, Attorneys at Law, appearing on behalf
6 of the Petitioners;

6

7 WILLIAM G. CLARK and CARRIE L. BASHAW, Assistant
8 Attorney Generals, appearing on behalf of the
9 Respondent.

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1 SEATTLE, WASHINGTON

2 TUESDAY, SEPTEMBER 22, 2009

3 MORNING SESSION - 10:50 A.M.

4 --oOo--

5 THE COURT: Please be seated.

6 And, Ms. Ryan, if you would please
7 retake the stand.

8 BY MS. BASHAW:

9 Q. Ms. Ryan, do you have Exhibit 228?

10 A. I'm sorry. 228?

11 Q. 228.

12 A. I don't have that book.

13 Q. Do you recognize Exhibit 228?

14 A. Yes, I do.

15 Q. And could you tell us what this is.

16 A. This -- I'm just looking -- I'm just trying
17 to see the date of it. This is sort of a report that
18 was done by our -- the State Board staff on the High
19 School Diploma Project.

20 Q. The Meaningful High School Diploma that you
21 referred to earlier?

22 A. Correct.

23 Q. And this is a document that was prepared by
24 the staff at the State Board of Education?

25 A. That's correct.

1 MS. BASHAW: Respondents would offer Exhibit
2 228.

3 THE COURT: 228 is offered.

4 MR. ROBB: No objection, Your Honor.

5 THE COURT: 228 is admitted.

6 EXHIBIT ADMITTED

7 BY MS. BASHAW:

8 Q. Do you see it in the very first page, the
9 sort of first indented paragraph, "The State Board of
10 Education"?

11 A. Yes.

12 Q. It says, "Shall establish high school
13 graduation requirements or equivalencies for students
14 except those equivalencies established by the local
15 high schools or school districts under RCW
16 28A.230.097."

17 Do you see that?

18 A. Yes.

19 Q. And what's your understanding of what it is
20 the State Board of Education does not establish
21 equivalencies for?

22 A. I think that's referring to the power that
23 districts -- or districts and, I guess, schools --
24 individual schools have to set some criteria for career
25 and technical education courses, and they would be in a

1 better position to judge what -- whether a particular
2 career or course meets one of the basic high school
3 requirements.

4 Q. And why would they be in a better position?

5 A. They would presumably have knowledge of the
6 course content, and given that we have, you know, 295
7 school districts and the amount of variation that could
8 be present -- some set of eyes. Some judgment call has
9 to be made and so the RWC provides that, in those
10 cases, the district is making that judgment call.

11 Q. So what does it mean to establish an
12 equivalency?

13 A. That you -- it's just, basically, trying to
14 set some criteria for course content and then allowing
15 different -- a variety of courses, a variety, perhaps,
16 of instructional strategies to be acceptable as long as
17 the content is mastered by the student.

18 Q. Does establishing an equivalency, say, in
19 career and technical courses in any way mean that the
20 local school districts can get around the minimum
21 number of credits in reading, math, science that are
22 created by the State Board of Education?

23 A. No.

24 Q. So this would just be whatever equivalent
25 criteria within the career and technical course itself

1 in order to reach a passing grade or to get credit in
2 that class. That's what the local districts can
3 create?

4 A. Yes. I think it's more a case of -- I'm
5 trying to think of an example that might make it
6 clearer.

7 Maybe, like, an easy one would be, just some
8 type of construction trade, vocational class. It's
9 teaching math in -- by using project-based learning.
10 The students are learning how to build certain things,
11 and so they're mastering algebraic concepts and
12 geometry concepts in a different type of course than a
13 student who's sitting in a traditional classroom being
14 in a lecture format, getting the same -- you know,
15 getting algebra and geometry in a lecture format
16 traditional classroom.

17 And so is the -- is the career and technical
18 education course, are they giving enough algebra and
19 geometry content so that the student's transcript can
20 convey that that student has taken that -- that
21 material?

22 Q. So --

23 A. Does it count? Like, does -- and we're
24 dealing -- this is a real-world example. What will --
25 what will count as an Algebra 1 class? What counts?

1 And so they could -- they would -- they can go to the
2 Career and Technical Education Skills Center. They can
3 take Construction Trades 101, and then -- and someone
4 has to literally look at the high school EALRs and the
5 content that is being taught in the Construction 101
6 class and find it sufficient to meet a math credit.

7 Q. Okay. And do you know if that's a process
8 that the districts engage in and then get their local
9 board approval for those equivalencies?

10 A. I'm not -- I think so, but I'm not sure.

11 Q. If you could turn to page two of Exhibit
12 228. And under the second sort of paragraph that
13 starts out, "The purpose of the diploma," do you see
14 that --

15 A. Yes.

16 Q. -- paragraph?

17 The third sentence in says, "The diploma is a
18 compact among students, parents, local school
19 districts, the state, and whatever institution or
20 employer the graduate moves on to. A compact that says
21 the graduate has acquired a particular set of knowledge
22 and skills."

23 What was that referring to?

24 A. It was a sentence that was aimed at conveying
25 our -- I mentioned earlier that we -- we took seriously

1 the word meaningful, in this idea of meaningful high
2 school diploma, that the diploma should mean
3 something. So it shouldn't just be, I went to school,
4 I sat in the class, and I -- and I made it through.
5 That it should signify to the world, the world in this
6 case defined with all these different constituencies,
7 that the student has mastered certain content.

8 It should -- the student should know and be
9 able to do certain things at a certain level, that the
10 diploma is -- once received, it stands for something.

11 Q. And what acquired a particular set of
12 knowledge and skills is it that a student will have if
13 they get one of these diplomas?

14 A. Well, the whole -- the whole host of the
15 Washington state standards, and then they would have
16 met their -- they would have mastered course content
17 based on the Washington state standards, and then they
18 would have demonstrated that in the student assessments
19 with the ones required for graduation, and then our top
20 line is that they would have mastered skills and
21 learned content sufficient to position them for success
22 in post-secondary education in the world of work and
23 citizenship.

24 So it's a pretty broad array of mastery and
25 skills.

1 Q. All right. Now, that would include attaining
2 the goals that are set out in House Bill 1209, the new
3 definition that's adopted in 2261?

4 A. Yes.

5 Q. If you could turn to page six.

6 Down there under the National Trends and
7 Credit Requirements, do you see that?

8 A. Yes.

9 Q. And it looks like the Board, in doing its
10 work, looked at our neighboring states, Idaho and
11 Oregon.

12 Do you see that?

13 A. Yes.

14 Q. So it looks like Oregon and Idaho also were
15 moving in this direction into the future of 2013 and
16 2014 of adding to their -- I'm sorry 2012, of adding
17 their credit requirements as well.

18 Is that correct?

19 A. Yes.

20 Q. If you could go to page 11.

21 Down under the section World Language
22 Graduation Requirements --

23 A. Yes.

24 Q. -- it says that, "The majority of states, 34
25 or 67 percent, do not require world language of all

1 students."

2 Do You see that?

3 A. Yes.

4 Q. Did that surprise you in looking across the
5 country at what other states are doing around the world
6 with languages credits?

7 A. I don't know. I -- yes and no. In a way
8 it's surprising and another way it's not. It's just
9 kind of a commentary on where we are in education.

10 Q. If you could go to page 19.

11 The report in Exhibit 228 talks about the
12 Culminating Project and High School and Beyond Plan.

13 Do you see that?

14 A. Yes. Yes.

15 Q. What are those?

16 A. They're additional -- they're additional high
17 school -- they're additional requirements. The
18 Culminating Project is a project that usually is done
19 and presented in the senior year, and supposed to, sort
20 of as its name suggests, pull together exemplary work
21 on the part of the student to draw from different -- it
22 could draw from different subject areas. It could be
23 interdisciplinary in nature. It could be a project.
24 There's a fair amount of flexibility in what it is, but
25 it's supposed to be a project that demonstrates their

1 mastery of high school level material.

2 And then the High School and Beyond Plan is
3 really a planning tool -- a planning requirement to
4 help for students, to help them plan out their high
5 school course taking.

6 Q. And this became a requirement for the first
7 time in 2008.

8 A. (Witness nods head.)

9 Q. Is that your recollection?

10 A. Yes.

11 Q. How will the current requirements around the
12 Culminating Project and the High School and Beyond Plan
13 fit it in with the CORE 24 process?

14 A. The High School and Beyond Plan, I would say,
15 is very important in the theory of CORE 24, that we
16 hope the High School and Beyond Plan will become a very
17 in-depth and meaningful tool for students and their
18 parents and their guidance counselors to, hopefully,
19 beginning in late middle school, to help them realize
20 the significance of the choices that they make, and we
21 hope it will be a guiding -- a process by which
22 students really are guided and make good decisions in
23 high school as much as possible.

24 Q. The Culminating Project, is this project in
25 any way one of the ways in which students can show

1 their mastery, if you will, of particular subjects in
2 lieu of passing the WASL?

3 A. No.

4 Q. Are there processes that students can
5 undertake currently that the Board has approved that
6 allows them to show mastery of particular subjects
7 without actually having passed the WASL?

8 A. The -- yes. There -- the Office of the
9 Superintendent of Public Instruction, with a lot of
10 input from the Board, developed a process called the
11 Collection of Evidence, and it is a way for students to
12 amass a set of their work that they and a teacher
13 believe is evidence of that student's work relative to
14 certain grade level expectations.

15 Now, my understanding is that, unfortunately,
16 the Legislature -- that that -- that that was not
17 funded in the most current year and so is not
18 available.

19 Q. Which isn't available?

20 A. The Collection of Evidence at this point in
21 time is no longer available as a mechanism for passing
22 the WASL.

23 Q. Okay. Well, WASL is being changed as well,
24 under Superintendent Dorn.

25 A. Right. So, I mean, my hope will be that in

1 better economic times, hopefully, the state will see
2 the wisdom of having the alternative assessment
3 available for students. It -- there was a lot of
4 legislative support for it. And the Board is very --
5 we're very supportive of students having a way, besides
6 a test, to meet their -- to show that their mastery of
7 subject matter -- that we think it's a very healthy and
8 appropriate additional mechanism to have in place for
9 those students who will do -- who will be better served
10 by having that alternative assessment method.

11 THE COURT: Which exhibit, counsel?

12 MS. BASHAW: 1464.

13 THE COURT: Thank you.

14 BY MS. BASHAW:

15 Q. Actually, I'm going to have you look at 1464
16 and 65. But let me back up first.

17 1464. Do you recognize this as a document
18 explaining the Certificate of Academic Achievement and
19 the Certificate of Individual Achievement?

20 A. I recognize that that's what these are. I
21 haven't actually -- I haven't seen these pieces of
22 paper, but --

23 Q. Are you familiar with those two things, as
24 the Chair, the Certificate of Academic Achievement and
25 the Certificate of Individual Achievement?

1 A. Yes, I am.

2 Q. And how do those relate to a student's
3 ability to meet graduation requirements?

4 A. They are -- in addition to the course-taking
5 requirements and the Culminating Project and the High
6 School and Beyond Plan, there are additional graduation
7 requirements.

8 I mean, they refer to the requirements for
9 students to pass certain subject area tests as
10 additional graduation requirements. And then, there's
11 a lot of -- written here about the additional options
12 that students have if they don't meet the test, the
13 WASL test, different way that they can demonstrate
14 competency.

15 There's different equivalent scores, for
16 example, from the PSAT, the SAT, the ACT. If they got
17 those scores, they would be deemed to have met the
18 WASL, and it could -- that could count toward their
19 fulfilling their requirements in order to earn a
20 Certificate of Academic Achievement.

21 Q. So looking on page two under the CAA
22 options.

23 A. Yes.

24 Q. The second bullet, Earning scores at or above
25 state designated level on the PSAT, SAT, ACT, and

1 Advanced Placement, is that what you were just
2 referring to?

3 A. Yes. Yes.

4 Q. And does the Board have a role in relation to
5 earning these scores on the PSAT, SAT, ACT?

6 A. Yes, we set the passing scores.

7 Q. Okay.

8 MS. BASHAW: First, Your Honor, respondents
9 would offer Exhibit 1464.

10 THE COURT: 1464 is offered.

11 MR. ROBB: Your Honor, we would object based
12 on lack of foundation. She's testified that she's
13 never seen these documents before, and, to her
14 knowledge, the alternative assessment they've discussed
15 is no longer available at this time due to the lack of
16 funding.

17 THE COURT: I'm sorry. I just missed your
18 last statement.

19 MR. ROBB: Oh. That she's testified that the
20 alternative assessment, with some of them, are no
21 longer available at this time either, so --

22 THE COURT: So would that be a relevance
23 objection?

24 MR. ROBB: Yes, Your Honor.

25 MS. BASHAW: That wasn't what her testimony

1 was. Her testimony was specific to the collection of
2 evidence, not to these other matters.

3 I don't believe that there was an
4 objection raised. This was an ER 904 document that we
5 presented. Same with 1465. I don't believe there has
6 been an objection under ER 904.

7 MR. ROBB: We're just not sure how it's
8 relevant when the witness hasn't even seen these
9 documents before, and when, apparently, the things are
10 no longer as they are stated in that document.

11 THE COURT: All right. Well, let's see.
12 Under ER 904, a relevance objection is still reserved
13 until the time of trial.

14 This witness is not specifically
15 familiar with this document, and I'm not sure she can
16 testify as to OSPI at this time.

17 MS. BASHAW: Okay.

18 THE COURT: And to what --

19 MS. BASHAW: Authenticity is admitted.

20 THE COURT: Authenticity is admitted.

21 MS. BASHAW: So all of the other things under
22 ER 904 --

23 THE COURT: Everything is admitted by
24 relevance.

25 MS. BASHAW: Okay. And what is relevant is

1 her discussion of earning scores at or above state-
2 designated level under PSAT, SAT, ACT. There's a
3 connection between the Board and this discussion in
4 this document to that process.

5 THE COURT: Mr. Robb?

6 MR. ROBB: That's her testimony, Your Honor,
7 but that doesn't go to relevancy of the document, and
8 our continuing concern with her not having any
9 knowledge of the document itself.

10 THE COURT: Well, is this the current
11 standard or do we know? Ms. Bashaw?

12 MS. BASHAW: It's my understanding this is
13 still current, Your Honor.

14 THE COURT: Well, if it's current, it's
15 relevant. If it's not current, it's not relevant. And
16 I don't know if this witness can testify as to its
17 currency or not. That would be my only concern --

18 MS. BASHAW: All right.

19 THE COURT: -- as to whether this witness
20 is -- I mean, the witness has stated her knowledge with
21 respect to some of the portions in here, specifically
22 the alternative testing, and her testimony stands on
23 its own independent of Exhibit 1464.

24 My concern would be the content of 1464
25 in those areas. This witness has not testified to, is

1 not familiar with, and may or may not be the current
2 standard. That would be my concern with respect to the
3 relevance objection.

4 MS. BASHAW: Certainly.

5 THE COURT: So unless we get testimony with
6 regard to the currency of this document with regard to
7 graduation standards, I would sustain the objection.

8 MS. BASHAW: All right. Perhaps the court
9 could reserve until --

10 THE COURT: I will reserve.

11 MS. BASHAW: Thank you, Your Honor.

12 THE COURT: So 1464 is reserved at this time
13 on relevance.

14 BY MS. BASHAW:

15 Q. You talked about the SAT and ACT, what is it
16 that the Board is responsible for as it relates to
17 those tests and graduation?

18 A. The Board has the responsibility to set a
19 passing score that would be equivalent to passing the
20 WASL in those subject areas. OSPI does the technical
21 work. They have technical advisors that are test
22 experts and -- but, the Board actually makes the
23 determination of, in this case, equivalency between a
24 certain SAT score and a certain WASL score in a given
25 subject.

1 Q. And how does the Board go about that process
2 of determining what scores on an SAT or the other tests
3 is equivalent to a WASL?

4 A. The Board is staffed by OSPI and so they --
5 and it's really a very thorough process that is -- that
6 they undertake. They consult with their -- they have a
7 national group of technical experts that advise on
8 testing, all the reliability and validity concerns and
9 testing. And they basically look at massive sample
10 sizes of students and look at where the score
11 equivalencies lie.

12 So we take -- they brief us. They -- we read
13 their accounts of their process. We -- if we feel it
14 necessary, we'll have members of their technical
15 advisory group come and speak to the Board if there are
16 letters of clarification.

17 Q. Okay. I'm going to have you look at 1563.
18 Is that up in your pile anywhere?

19 A. I think so.

20 Q. Okay. We're also going to end up with one in
21 this notebook as well, so I'll put it here.

22 Do you recognize Exhibit 1563?

23 A. Yes, I do.

24 Q. And what is this?

25 A. This is a Board -- a document prepared by the

1 Board for a Board meeting where we were deliberating on
2 this cut score issue.

3 Q. The cut score being identifying --

4 A. The passing scores for PSAT, SAT, ACT math,
5 equivalencies.

6 Q. The equivalency to passing WASL then?

7 A. Yes.

8 Q. And was this for a particular subject area,
9 Exhibit 1563?

10 A. I believe it was for math.

11 MS. BASHAW: Your Honor, respondents would
12 offer 1563.

13 MR. AHEARNE: Your Honor, could I just voir
14 dire the witness for one minute on this?

15 THE COURT: Certainly.

16 VOIR DIRE EXAMINATION

17 BY MR. AHEARNE:

18 Q. Is this something prepared by Joe Willnoft at
19 OSPI or prepared by the Board?

20 A. I'm not sure.

21 MR. AHEARNE: Your Honor, if this is being
22 admitted for the truth of the matter asserted by
23 Willnoft, it's hearsay. If it's prepared by the Board,
24 I wouldn't have that objection. I'm not sure which one
25 it is.

1 MS. BASHAW: I believe the witness testified
2 that OSPI does essentially the leg work. So, perhaps,
3 we could ask her that question, is this the leg work
4 OSPI did or the Board in order to evaluate the cut
5 scores.

6 THE COURT: Is that the question?

7 MS. BASHAW: That's the question.

8 THE WITNESS: Yes.

9 MR. AHEARNE: Your Honor, we have no
10 objection if this is being admitted for the purpose of
11 what OSPI told the Board. We do have a hearsay
12 objection if it's being admitted for the truth of what
13 Mr. Willnoft -- you know, the statements and facts he's
14 purporting to represent.

15 MS. BASHAW: Well, Your Honor, it's a
16 business document. It's a public document. I think
17 that it, you know, meets all exceptions to the hearsay
18 rule.

19 THE COURT: Isn't this a business record,
20 Mr. Ahearne?

21 MR. AHEARNE: If Mr. Willnoft was testifying
22 that this was prepared in the ordinary course of OSPI's
23 business -- I mean, I think the foundation could be
24 laid to establish what this actually is and how it was
25 presented and who created it. I just don't, at this

1 point, see it there.

2 MS. BASHAW: Well, I believe --

3 MR. AHEARNE: I'm sure Ms. Bashaw can.

4 MS. BASHAW: Well, I believe Ms. Ryan did
5 testify that OSPI, again, does the leg work, prepares
6 the information, and presents it to the Board for the
7 Board to make a decision.

8 THE COURT: I think there's a sufficient
9 foundation laid for this to be a business record. It
10 was prepared by staff public supporting -- OSPI staff
11 member supporting the Board. It was in preparation of
12 a Board meeting or discussion for purposes of the cut
13 scores. I will admit 1563.

14 1563 is admitted.

15 EXHIBIT ADMITTED

16 MS. BASHAW: Thank you, Your Honor.

17 BY MS. BASHAW:

18 Q. So if we could flip back one to 1562. Do you
19 recognize Exhibit 1562?

20 A. It's a set of minutes from the November 27th,
21 28th, 2006 Board meeting.

22 Q. All right. And this was a Board meeting of
23 the State Board of Education?

24 A. Yes.

25 Q. And it indicates at the last page that the

1 minutes were approved or adopted by the Board on
2 January 25th, 2007?

3 A. Yes, it does.

4 Q. And going to the 17th page. The numbers are
5 in the bottom left-hand corner. The cut score
6 approval. The motion there. Do you see that?

7 A. Yes.

8 Q. The motion indicates that the Board approved
9 the motion to adopt the cut scores for PSAT, SAT, ACT
10 alternative to WASL and that motion was carried.

11 Do you see that?

12 A. I do see that.

13 Q. And is that your recollection as well?

14 A. Yes.

15 Q. And does that relate to the mathematics cut
16 score that we saw in Exhibit 1563?

17 A. Yes.

18 Q. If you --

19 MS. BASHAW: Respondents would offer Exhibit
20 1562?

21 THE COURT: 1562 is offered.

22 MR. ROBB: Your Honor, we made our objection
23 to this document in our full responses because it was
24 responsive to our discovery request, requested
25 during -- but only produced when the respondents

1 produced exhibits for trial.

2 THE COURT: So untimely production?

3 MR. ROBB: Untimely production.

4 THE COURT: Ms. Bashaw, do you want to
5 respond to that?

6 MS. BASHAW: I believe that we went through a
7 process of identifying where all of those exhibits
8 were. I don't have all those notes in front of me. We
9 provided information to counsel identifying it. But,
10 they made a number of those kinds of objections, and we
11 did the leg work to find that information.

12 Do we have that information with us?

13 THE COURT: All right. I will reserve on
14 it. Why don't you indicate when this was produced to
15 the petitioners so that I can make a determination as
16 to whether it was timely or not.

17 1562 is reserved.

18 MR. ROBB: Thank you, Your Honor.

19 THE COURT: You're welcome.

20 BY MS. BASHAW:

21 Q. If you could look at -- you've indicated that
22 the cut score for math, for SAT, ACT, PSAT, was adopted
23 by the Board.

24 Did the Board consider cut scores for any
25 other subject areas besides math?

1 A. I think we did. I'm just trying to --

2 (reading). I think we did. I'm just not remembering.

3 Q. If you look at Exhibit 1564, would Exhibit
4 1564 and 1566 refresh your memory?

5 A. Yes.

6 Q. So as to the question whether the Board had
7 adopted any other cut scores for these alternative
8 exams in other subject areas, what did the Board do in
9 that regard?

10 And you're looking --

11 A. I mean, I'm pretty sure. I'm just -- this is
12 a little ways back.

13 Q. If you look at page --

14 A. I'm pretty sure that we approved them for
15 reading and writing. There was a -- there was a -- we
16 did something different with the ACT because of the
17 lack of -- there was a technical reason that there was
18 a lag in getting one of the ACT equivalents, but I
19 believe that that then came through and we -- I think
20 we have all of them in place now. But that's my
21 recollection.

22 Q. All right. So if you turn to page seven of
23 Exhibit 1566.

24 THE COURT: I think it's in a different
25 notebook; is that correct?

1 MS. BASHAW: It is, Your Honor.

2 Unfortunately it carried over to a new notebook.

3 THE COURT: All right.

4 THE WITNESS: Yes. Okay. I see that.

5 THE COURT: You say page seven, counsel?

6 MS. BASHAW: Yes, Your Honor.

7 BY MS. BASHAW:

8 Q. Do Exhibits 1564 and 1566 refresh your memory
9 about what you did in the area of reading and writing
10 and cut scores?

11 A. Yes. It's what I was -- that's what I was
12 recalling, that we -- we were able to do the SAT, both
13 reading and writing, and we could do the ACT reading,
14 and then we had to do the ACT writing one later.

15 Q. All right. And what cut score did you
16 establish for the SAT reading?

17 A. I'm reading the -- on page seven. The
18 reading score is 350.

19 Q. And the ACT reading?

20 A. Is an ACT score of 13.

21 Q. And the SAT writing?

22 A. Is 308.

23 Q. So, what exactly does a cut score mean?
24 Well, let me back up.

25 So if a student reaches one of these scores

1 on those tests, SAT, ACT, does that mean that they're
2 then considered to have passed that WASL examine for
3 those subject areas?

4 A. Yes.

5 Q. And what's the significance of identifying a
6 cut score as a comparator to a WASL exam?

7 A. I'm not sure I know what you mean, is what
8 the significance.

9 Q. When you're -- when the Board is establishing
10 a cut score, what exactly are they trying to determine
11 by making that cut score figure or passing rate?

12 A. They're trying to figure out what score --
13 it's an equivalency exercise. So they're trying to
14 look at these other tests and say, what score would you
15 have gotten -- had to get on the SAT in order to have
16 gotten to meet or exceed the state standard on the WASL
17 for that same subject area.

18 Q. So if I understand your testimony correctly,
19 as it relates to math, reading, and writing, the Board
20 has adopted cut scores that would be equivalent to
21 passing the WASL for those subjects where SAT and ACT,
22 except ACT and writing?

23 A. Yeah, I think we have now done writing. I
24 think we -- writing did not come through in this first
25 set of equivalencies, and I believe we have

1 subsequently done writing.

2 Q. Ms. Ryan, do you make -- does the Board make
3 its minutes available on its website?

4 A. I'm not sure, but I think we do. I'm not
5 positive.

6 MS. BASHAW: Your Honor, we would offer
7 Exhibits 1566 and 1564.

8 THE COURT: Mr. Robb?

9 MR. ROBB: Well, we had the same objections
10 on hearsay and lack of foundation, but given your
11 business record ruling on 1563, no objection.

12 THE COURT: 1564 is admitted, 1566 is
13 admitted.

14 EXHIBITS ADMITTED

15 MS. BASHAW: And so, does that mean you're
16 waiving as to 1563 and 2? I'm not sure I understood
17 that. You said something about 1563.

18 THE COURT: Well, let's --

19 MR. ROBB: 1563 was a hearsay objection and
20 we had made that objection. He determined it was a
21 business record, so --

22 MS. BASHAW: Okay.

23 MR. ROBB: -- it has nothing to do with 1562.

24 MS. BASHAW: All right. I just heard you say
25 1562. I got confused.

1 THE COURT: What he was saying is based on my
2 prior ruling on the prior exhibits, that they would
3 have raised the objection but for my ruling on the
4 business records.

5 MS. BASHAW: All right.

6 BY MS. BASHAW:

7 Q. Ms. Ryan, is the Board also involved in
8 anything relating to something called Form 1497?

9 A. Yes, we are.

10 Q. And what is Form 1497?

11 A. It is a form. I guess I would call it a
12 compliance form, where districts certify that they're
13 in compliance with the major aspects of the basic
14 education funding and regulations.

15 Q. I'll take some notebooks away as you're
16 getting surrounded.

17 MS. BASHAW: So I'm going to be looking at
18 Exhibit 317, Your Honor.

19 BY MS. BASHAW:

20 Q. Do you recognize Exhibit 317?

21 A. Yes, I do.

22 Q. And is this the Form 1497 that you just
23 referred to?

24 A. Yes, it is.

25 MS. BASHAW: Respondents would offer Exhibit

1 317.

2 THE COURT: 317 is offered.

3 MR. ROBB: I thought it was already -- I
4 believe it's already been admitted, Your Honor.

5 THE COURT: All right. Oh, it has.

6 MS. BASHAW: All right.

7 THE COURT: It was previously admitted.

8 MR. AHEARNE: Okay.

9 BY MS. BASHAW:

10 Q. Ms. Ryan, Exhibit 317, to the best of your
11 knowledge, is this the most current version of Form
12 1497?

13 A. Yes.

14 Q. As of, according to down at the bottom,
15 August of '08?

16 A. Correct.

17 Q. And if you look at Exhibit 319. There's --
18 let's see.

19 MS. BASHAW: I think 319 has already also
20 been admitted, Your Honor.

21 THE COURT: It has.

22 MS. BASHAW: That is correct.

23 BY MS. BASHAW:

24 Q. All right. So, Ms. Ryan, looking at
25 paragraph four on the first page of Exhibit 319, under

1 the section that says what information must be included
2 on Form OSPI 1497, do you see that?

3 A. Yes.

4 Q. And in paragraph four, it refers to the Board
5 as asking districts to indicate compliance on their
6 minimum high school graduation requirements, that all
7 high schools in the district require students to take
8 the minimum of 19 credits in all subject areas, 20
9 credits for the class of 2013 and beyond. In addition,
10 the district must ensure that the minimum state credits
11 are aligned at a minimum with grades 9 through 10 grade
12 level expectations or State Essential Academic Learning
13 Requirements at benchmark three.

14 Do you see that?

15 A. I do.

16 Q. Now, in looking at Exhibit 317, what portion
17 of Exhibit 317 captures what I just read out of Exhibit
18 319?

19 A. On 317 it's the last item in the grid where
20 they're checking their compliance. So it's the sixth
21 area that we're asking them to certify.

22 Q. I'm just going to have you -- I apologize,
23 but I'm going to have you look at Exhibit 230. I'm
24 afraid this is one that doesn't have page numbers on
25 it.

1 A. Okay.

2 Q. Oh, no, it does. If you go to page 46 of
3 Exhibit 230.

4 MS. BASHAW: And, I'm sorry, has Exhibit 230
5 been offered?

6 MR. ROBB: I don't think so.

7 MS. BASHAW: No?

8 BY MS. BASHAW:

9 Q. Ms. Ryan, I have to back up a step.
10 Do you recognize Exhibit 230?

11 A. Yes, I do.

12 Q. And can you identify it for the record,
13 please.

14 A. This was one of the -- as we began to work on
15 high school graduation requirements, this was one of
16 the earlier pieces of staff work that our main staff
17 person on this project presented to the Board.

18 MS. BASHAW: Your Honor, respondents would
19 offer Exhibit 230.

20 THE COURT: 230 is offered.

21 MR. ROBB: No objection, Your Honor.

22 THE COURT: 230 is admitted.

23 EXHIBIT ADMITTED

24 BY MS. BASHAW:

25 Q. So, now, looking at page 46, the third bullet

1 there says, "The committee might consider adding a line
2 to Form 1497 (Minimum Basic Education Compliance):
3 'District high schools meet all state minimum
4 graduation requirements.'"

5 Do you see that?

6 A. Yes.

7 Q. And that was written in -- or that slide was
8 prepared somewhere around June of 2007; is that right?

9 A. Yes.

10 Q. What does that refer to? Why was the Board
11 needing to look at making a change or adding a line to
12 Form 1497?

13 A. The Board was interested in using the tool of
14 1497 to provide a little bit better mechanism for
15 assuring that districts were meeting the high school
16 minimums. And another thing that was in play at the
17 time was the issue we talked a little bit earlier
18 about, math course taking and that we were worried that
19 we had seen evidence from a Superintendent's survey
20 that a lot of students were not taking the -- the math
21 classes that they were taking probably were not meeting
22 high school math standards in terms of the grade level
23 expectations.

24 So we were kind of trying to do two things in
25 this. Use this process -- this 1497 process to get the

1 districts to reflect on those two things. Reflect, and
2 again, in their situation, relative to are they -- are
3 they meeting the high school minimum graduation
4 requirements. So make that explicit. And then the
5 second -- the sentence, the explanatory sentence which
6 says, "that the subject areas are aligned with the high
7 school standards," and at a minimum to 910 GLEs, that
8 that would also be a certification because we thought
9 that both -- doing both of those things would help us
10 on both fronts, both on meeting high school minimum
11 requirements, making sure and hopefully raising the
12 level of content that was being offered to students in
13 math.

14 Q. Okay. And when you were reading, you were
15 reading from Exhibit 317?

16 A. Yes.

17 Q. All right. Overall, as a document, what does
18 the Superintendent's signature on Exhibit 317, Form
19 1497, what does it intend -- or what does the Board
20 intend by the Superintendent or its designee signing
21 this document?

22 A. Well, the intent is to receive the
23 certification from the districts that they're meeting
24 the minimums of basic education that are defined in the
25 manner that the form lays out as to instructional time,

1 number of days, student-teacher ratios, and then that
2 they're meeting the minimum high school graduation
3 requirements and at least in the -- that the
4 subject's content level is appropriate.

5 Q. And under the certification of compliance
6 box, where it says that "We hereby certify that the
7 Board of Directors has been apprised and that the
8 (blank) school district meets all requirements relating
9 to the minimum requirements of the State Basic
10 Education Programs."

11 Do you see that?

12 A. Yes.

13 Q. And --

14 THE COURT: I'm sorry, counsel. Are we back
15 on 317?

16 MS. BASHAW: We are, Your Honor. I
17 apologize.

18 THE COURT: Okay. Thank you. Okay. You may
19 proceed.

20 BY MS. BASHAW:

21 Q. What I just read from Exhibit 317, Ms. Ryan,
22 what meaning does that have for the Board of Education
23 when the Superintendent signs that certification?

24 A. That they're -- that they're certifying that
25 their school board is affirming their districts

1 compliance with these requirements.

2 Q. Okay. So now I'm going to have you go to
3 Exhibit 235. I'll take this one away from you. It
4 would be in this one.

5 MS. RYAN: Ms. Ryan, do you have Exhibit 235?

6 A. Yes.

7 MS. BASHAW: All right. And I thought that
8 Mr. Ahearne had asked -- or offered 235 already.

9 THE COURT: I'm sorry?

10 MS. BASHAW: Has 235 been admitted?

11 THE COURT: No.

12 MS. BASHAW: No.

13 BY MS. BASHAW:

14 Q. Ms. Ryan, what is Exhibit 235?

15 A. It is a presentation that the Board staff
16 made to the CORE 24 Implementation Task Force. This is
17 a group that we -- of people from school districts that
18 we asked to help us with the next level of planning out
19 the implementation of CORE 24.

20 Q. All right. And this was prepared by the
21 Board staff?

22 A. Yes.

23 MS. BASHAW: Respondents would offer 235.

24 THE COURT: 235 as offered.

25 MR. ROBB: No objection, Your Honor.

1 THE COURT: 235 is admitted.

2 EXHIBIT ADMITTED

3 BY MS. BASHAW:

4 Q. So I want to turn to -- it's going to be a
5 number at the top right-hand corner, 17 is the last two
6 digits of that number.

7 A. I'm sorry, the whole punch has punched
8 through the number, so -- what does it say on the top
9 of it?

10 Q. It's the one that looks like this. It
11 should -- actually, in the right hand -- let's see.
12 Some are there, too.

13 THE COURT: There's 18, you can read better,
14 and so it's the one right before 18.

15 THE WITNESS: Yeah. Okay. Thank you.

16 BY MS. BASHAW:

17 Q. Ms. Ryan, I just wanted to try and understand
18 page 17 a little more clearly.

19 This, apparently, is depicting where various
20 countries are in terms of the age groups for those
21 countries and whether they have an associate or higher
22 degree.

23 A. Yes.

24 Q. All right. And it looks to me like, at least
25 the age group 45 to 54, the U.S. and Washington exceeds

1 all the other comparators -- comparator countries -- or
2 meets, at least Canada -- but exceeds all other
3 countries, Japan, Korea, Ireland, Spain, and France.

4 A. The age group 45 to 54?

5 Q. Right.

6 A. Yes.

7 Q. And then it also looks like, for the age
8 group 25 to 34, Washington and the U.S. is on the same
9 level or par with France, Spain, and Ireland; is that
10 correct?

11 A. (Reviewing.) That's correct.

12 Q. And Korea, Japan, and Canada exceeding us by
13 eight to 12 percent for that age group 25 to 34.

14 A. That's correct.

15 Q. Okay. If you could go to page 29.

16 A. Okay.

17 Q. This graph was depicting, I think, your
18 testimony earlier about how various districts in the
19 state may have higher credit requirements than the 19.

20 A. Correct?

21 Q. Is this, in a way, reflective of the concept
22 you spoke about earlier, about strong local control
23 system in our state, the fact that districts would
24 adopt more credits than the 19?

25 A. I think it's reflective of a lot of things.

1 I think it's reflective that most communities and
2 districts have made the decision to offer more credits
3 because their parents and students and its school
4 administrators have -- you know, they want that. They
5 want that for the kids, and so it's sort of consumer
6 demand, and also it certainly is -- it certainly shows
7 local control. It also shows the power of the -- or
8 the significant role that's being played by local
9 levies in funding instructional time.

10 Q. Okay. If you could flip to page 24 then.

11 I'm sorry. Were you finished?

12 A. Yes.

13 Q. Okay. Flip to page 24.

14 Do you recall answering questions from
15 Mr. Ahearne about page 24 in this exhibit?

16 A. Yes.

17 Q. Okay. And this exhibit identifies by state
18 what the graduation requirements are, at least as of
19 the time that this PowerPoint was prepared in March of
20 '09?

21 A. Yes.

22 Q. And does this chart in any way tell you where
23 these various states, with all these various graduation
24 requirements or credits, where they come out in on-time
25 graduation rates or passage rates, their various

1 testing methods?

2 A. No.

3 Q. And are you familiar with NAEP, N-A-E-P?

4 A. Yes. Not -- I'm certainly not an expert
5 in -- a testing expert, but I am familiar with NAEP.

6 Q. And what's your familiarity with NAEP? What
7 do you know of that?

8 A. It's a long-standing national assessment that
9 is -- that is administered via a sample taken in all
10 states, and it shows the educational attainment levels
11 in reading and math.

12 Q. And does NAEP also provide some information
13 as to how states compare to each other in --

14 A. Yes.

15 Q. -- these tests?

16 A. Yes.

17 Q. Now, in looking at this page, page 24, I
18 notice at the bottom there, or to the far right, there
19 are at least four states that have -- or three states
20 that have no graduation requirements at all.

21 Do you see that?

22 A. Yes.

23 Q. And Massachusetts is one of them?

24 A. No state -- no state minimums.

25 Q. Nebraska and Pennsylvania.

1 A. Yes.

2 Q. And do you happen to know where Massachusetts
3 or any of these other states, where they are nationally
4 in the tests, the NAEPs?

5 A. NAEP, I'm pretty sure that Massachusetts is
6 at the top of NAEP.

7 Q. And what does that mean to be at the top?

8 A. That it's getting -- its students are scoring
9 the best.

10 Q. Ms. Ryan, you're on the Quality Education
11 Council, correct?

12 A. Yes.

13 Q. And that the council that's created out of
14 House Bill 2261?

15 A. Correct.

16 Q. Is the Chair of the State Board of Education
17 a permanent seat, if you will, on the Quality Education
18 Council?

19 A. It wouldn't necessarily have to be the
20 Chairperson, but the State Board of Education has a
21 seat on the Quality Education Council.

22 THE COURT: Ms. Bashaw, we're at the noon
23 hour, and I have a meeting I need to attend, so I'm
24 going to stop here.

25 We'll recess this matter and pick up

1 Ms. Ryan's testimony after the noon recess. We will
2 resume at 1:30.

3 Court is at recess.

4 (Noon recess.)

5 --oOo--

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1 SEATTLE, WASHINGTON

2 TUESDAY, SEPTEMBER 22, 2009

3 AFTERNOON SESSION - 1:30 P.M.

4 --oOo--

5 THE COURT: Good afternoon. Please be
6 seated.

7 Ms. Ryan, if you would please retake the
8 stand. We will continue at this time with cross-
9 examination of Ms. Ryan.

10 MS. BASHAW: Thank you, Your Honor.

11 BY MS. BASHAW:

12 Q. Ms. Ryan, I think I was asking about QEC when
13 we stopped for break. The QEC includes a number of
14 legislative members as well as Mr. Dorn, as the
15 Superintendent of OSPI, correct?

16 A. Correct.

17 Q. We're going to look at what's already been
18 admitted as Exhibit 1562.

19 A. (Reviewing.)

20 Q. Do you recognize the list of representatives
21 there under the QEC designation on Exhibit 1652?

22 A. Yes, I do.

23 Q. And, at this point, how many meetings has the
24 QEC had?

25 A. The QEC has had one meeting.

1 Q. And at this meeting was a Chair of the QEC
2 identified?

3 A. Yes. The groupie elected Superintendent
4 Randy Dorn to be the Chair of the QEC.

5 Q. And as a member of QEC, what are your goals?

6 A. My goals are to do a good job with the duties
7 that the law spelled out for us, and there are many.
8 But, at least initially, we have to take the various
9 charges that were in the law and come back to the
10 Legislature this January of 2010 with a phasing-in
11 funding plan for the new definition of basic education.

12 Q. And you're referring now to the various
13 things that are adopted in House Bill 2261?

14 A. That's correct.

15 Q. Now, I just want to step back for a second.

16 Earlier in response to Mr. Ahearne's -- some
17 of his questions, you mentioned something about needing
18 a considerable investment in math and science.

19 Do you recall that testimony?

20 A. Yes.

21 Q. And that there were some challenges around
22 that?

23 A. Around -- in -- there's challenges around
24 math and science.

25 Q. Right.

1 A. Yes.

2 Q. What challenges, under the current system,
3 are you aware of around being able to invest in math
4 and science -- or math and science teachers in
5 particular?

6 A. Okay. You're not asking me anything about
7 the QEC right now.

8 Q. Right. I flipped off that for a second.

9 A. All right.

10 Q. I apologize.

11 A. That's okay. We have -- we've just adopted
12 new math and science standards. We have to now make
13 sure that -- or the presumption, and a new math and
14 science assessment is coming -- will come online that
15 will assess students relative to those new math and
16 science standards.

17 So there's a challenge in that we've
18 introduced new standards. We have -- we're not funding
19 the school -- school districts very well for curriculum
20 and, so, especially when you have a new set of
21 standards, it's very important that districts have
22 aligned curriculum -- curriculum aligned to the
23 learning standards so that the kids can have the
24 opportunity to learn the material on which they will
25 eventually be tested.

1 So, under -- its very expensive for school
2 districts to put new curriculum in place. It's books
3 and materials and then teachers have to be trained on
4 the new curriculum. That is all very expensive.

5 We also have a tradition of local control,
6 vis-a-vis, curriculum decisions. So we don't mandate
7 the use of aligned curriculum. I shouldn't say it that
8 way. We don't mandate a particular curriculum. There
9 is a presumption that the districts are using a
10 curriculum that aligns with state standards, but we
11 don't mandate that they use a particular one.

12 So if you want to be -- so that's a challenge
13 because you -- and the state isn't providing -- we
14 don't -- we don't promulgate standards and then say,
15 okay, here's our standards, here you go, here's your
16 textbooks and materials, and it's all lined up, so use
17 these materials, teach the kids, and we'll test them on
18 this. We don't do it that way. We do the standards
19 and we have a test and we say you all should use
20 curriculum aligned to these standards, and we give them
21 some money every year toward curriculum and materials,
22 but it's hard for them to amass enough money to pay for
23 a whole new aligned curriculum from K through 12 in a
24 given subject. It's very expensive. So that's a
25 challenge.

1 We have another challenge in math and science
2 teaching. We have a shortage of math and science
3 teachers. We have a very -- we have a high rate,
4 relative to other states, of allowing teachers to
5 teach, particularly in upper grade math and science,
6 without subject matter background. That's a problem,
7 because you would want the students to be taught by
8 effective teachers with expertise in their subject
9 areas.

10 So that, you know, getting teaching talent I
11 believe is also a system problem.

12 Q. Now, you said there was a shortage of math
13 and science teachers.

14 Has there been an evaluation as to things
15 that could be put into place to try and attract
16 teachers with specialties in those areas?

17 A. Yes. And there's a lot going on. The K-12
18 system right now is trying a number of things. The
19 Professional Educators Standards Board had a major task
20 force on this very topic. They had a set of
21 recommendations, and a variety of efforts are being
22 attempted.

23 Q. And what are some of those recommendations?

24 A. They range from -- they have -- some of this
25 gets a little technical, and I'm not going to represent

1 myself as the best expert on all of it. But, they --
2 they administer -- the Professional Educator Standards
3 Boards administers a variety of methods of
4 certification for teachers. So one area is called an
5 alternative route to certification. One method of
6 becoming a teacher where a person, perhaps mid-career
7 person, can take some teaching courses and become a
8 certified teacher without going through a four-year
9 university teacher prep program.

10 So it's like a quicker way for a mid-career
11 person to come into the classroom. So, they are
12 expanding the opportunities to get licensure via these
13 alternative routes. That's one way.

14 They're doing a lot of recruiting and
15 publicizing of the alt route programs at math and
16 science -- with math and science heavy associations and
17 industry groups.

18 There's a program for existing teachers,
19 called a retooling program, so where the state provides
20 some funds to help math and science -- or a teacher --
21 someone who's already a certified teacher gain
22 additional expertise in getting what they call an
23 endorsement in math and science.

24 There's some additional incentives for
25 teachers who are teaching out of hard-to -- hard-to-

1 fill positions, some additional incentive pay
2 possibilities as well.

3 Q. Is that also known as differential pay?

4 A. Yes. But differential pay is, in a major
5 way, is not allowed at this time. So we're not really
6 using differential pay. I believe there are a few very
7 small sort of efforts where teachers can get some
8 additional pay. I'm just not really conversant in all
9 the details of the National Board Program.

10 We do have additional -- obviously additional
11 pay for teachers who go through the National Board
12 Certification Program. They get additional pay. On
13 top of that, we give some additional pay to those
14 people for taking assignments in high need schools.
15 And I think we may also be giving some additional pay
16 to those people, those national board certified
17 teachers for taking some hard-to-fill assignments. But
18 I'm not crystal, like 100 percent sure, about that.

19 Q. Sure. But, as it relates to math and
20 science, if I understood you, one of the things that
21 has been looked at is additional pay for math and
22 science teachers in particular as a way to recruit more
23 of these individuals?

24 A. The idea has come up in a number of venues,
25 but it is not -- is not in practice at this time.

1 Q. I believe you said it's not allowed; is that
2 right?

3 A. It is not allowed, and that's my
4 understanding.

5 Q. Okay. And what's your understanding as to
6 why it's not allowed?

7 A. My understanding is that we require -- the
8 way the salary regulations work, that we require a
9 uniformity in the salary allocations so that the
10 differences in salary are based on such things as years
11 of service or masters degree attainment but not solely
12 an area of competency.

13 Q. Okay. Has there been any opposition to the
14 idea of trying to pay math and science teachers higher
15 pay to try and recruit them into the teaching
16 profession?

17 A. Yes, there has been opposition to that.

18 Q. And what's your understanding about of what
19 the opposition is, and where is it coming from?

20 A. The opposition -- one opponent would be the
21 Washington Education Association, and I think they have
22 many other allies.

23 The viewpoint would be that it is a matter of
24 equity and also building morale, that teachers should
25 not be paid differently based on what subject they're

1 teaching. That they have an intrinsic value as a
2 teacher and that they should be paid for doing the job
3 not for -- not given preferential pay because they
4 happen to be a person who has one area of expertise
5 versus another, like a science teacher versus the 1st
6 grade reading teacher.

7 Q. So if we could go back to Exhibit 239. This
8 one. And turning to page six of Exhibit 239.

9 A. (Reviewing.)

10 Q. Under section 103, which is RCW 28A.150.210,
11 the Legislature amended this opening provision to
12 state, "A basic education is an evolving program of
13 instruction that is intended" and then it goes on.

14 Do you see that?

15 A. Yes.

16 Q. Do you agree with the amendment that the
17 Legislature provided in this section, i.e, determining
18 basic education as an evolving program of instruction?

19 A. Yes, I do.

20 Q. And why do you believe that basic education
21 is an evolving program of instruction?

22 A. Well, I guess -- I believe that it needs to
23 evolve as the world changes, as the demands of the
24 economy change, the labor market opportunities change,
25 the requirements of community colleges change,

1 technology changes, what it requires. What is required
2 of us as state officials, vis-a-vis, our ability to
3 provide the opportunity for students to be prepared for
4 post-secondary education, the world of work,
5 citizenship. That -- if those things change, then the
6 program of basic education has to also change.

7 One of the things that I thought was a good
8 thing in the law, and there are many, was the way they
9 set up -- the law sets up the Quality Education Council
10 because it tells it that you -- we will have you for an
11 on-going basis now, and you will -- you will attend to
12 this evolving definition. You will update it
13 periodically so that we don't find ourselves with a
14 stagnant definition in a rapidly changing world.

15 Q. All right. And do you understand 2261 to
16 basically encapsulate a phasing period for the
17 amendments that have been provided in these statutes in
18 2261 to be completed by 2018?

19 A. Yes. It contemplates -- the law contemplates
20 that the new definition of basic education will be
21 phased in, pursuant to a proposal that the QEC, with
22 also the funding work group, will develop and submit to
23 the Legislature for its enactment.

24 Q. And as the Chair of the Board of Education,
25 do you agree with the necessity, if you will, for a

1 phase-in period?

2 A. I'm a very impatient person, so I think a
3 phase-in period is reasonable on some of the items. I
4 think you have issues of -- you may have -- in the law
5 it's actually referred to as system capacity concerns,
6 so you have to -- you can sometimes get in a bit of a
7 chicken and egg situation where you're going to raise
8 requirements. That may be a good thing to do. The
9 requirements are going to require that you have more
10 teachers. You have to make sure you can get them. You
11 know, it has to do with our ability to deliver all the
12 dimensions of quality opportunity that we talked about
13 earlier. And in some cases, that will take some time
14 to put it all on the ground in a good way.

15 But, that said, I just -- you know, I just
16 feel that we have to be sure that that is why, that any
17 delay in doing -- in providing for the evolving
18 definition is due only to our ability to -- that we are
19 facing the need to implement more deliberately in order
20 to do a good job.

21 Q. All right. Now, in 2261, you're aware, I
22 presume, that the Early Learning provision was vetoed
23 by the Governor.

24 A. Yes.

25 Q. And would I assume correctly that that

1 wouldn't have been your choice to veto that section?

2 A. That's correct.

3 Q. All right. Putting aside -- and early
4 learning today is not yet considered part of basic
5 education in our state, correct?

6 A. That's correct.

7 Q. All right. So putting early learning aside
8 for a moment and just looking at K through 12, and
9 looking on page six of Exhibit 239, you see the
10 subsections there, read with comprehension, know and
11 apply core concepts, think analytically, understand the
12 importance of work and finance.

13 You understand those to be the House Bill
14 1209 goals?

15 A. Yes.

16 Q. All right. And so, putting aside early
17 learning, if 2261 is fully implemented, what is your
18 belief in terms of the state's ability to accomplish
19 the goals as referenced in those subsections from House
20 Bill 1209 and Section 104 of 2261, that we referred to
21 earlier on page seven?

22 A. In a nutshell, can you ask your question?
23 I'm sorry.

24 Q. Sure. In your opinion, if fully implemented,
25 putting early learning aside --

1 A. And I understand you're -- if it's fully
2 implemented, vis-a-vis, the basic education goals.

3 Q. Right.

4 A. Uh-huh.

5 Q. If fully implemented, how will 2261, in your
6 mind, meet the goals that are established or that were
7 established by House Bill 1209, and the goals that are
8 referenced here in Section 104 on page seven?

9 A. I think if it's fully implemented, it will do
10 an excellent job. And it is certainly implemented
11 is -- there's a lot to that clause. There's -- I
12 just -- we just had the prior question dealt with
13 phasing. So, phasing has to -- we can't delay
14 unnecessarily. So that's -- and I'm not saying these
15 as -- to detract from my answer but just to explain my
16 answer a little bit.

17 Q. Certainly.

18 A. And there's a lot to 2261 besides money. And
19 some of the sections are more defined than others in
20 terms of some of the sections contemplate additional
21 work needing to be done in order to help boost student
22 achievement in order to strengthen the system. We
23 talked early today about accountability.

24 So when I say, to me, fully implement, it
25 really means with the full complement of financial

1 investment but also with the reforms, the improvements
2 to the system that are contemplated in the full reading
3 of this piece of legislation.

4 Q. That may not require -- some of these other
5 complements may not require.

6 A. Correct. That are -- yeah, that's right.

7 MS. BASHAW: I don't have anything further.

8 Thank you, Your Honor.

9 THE COURT: Thank you, Ms. Bashaw.

10 Mr. Ahearne, redirected examination.

11 MR. AHEARNE: Yes, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. AHEARNE:

14 Q. I'll try to go through these in the same
15 order that the state's attorney ran through them.

16 First -- and some of these you don't have to
17 pull out the exhibit. I'm pretty sure you know what
18 I'm talking about.

19 The first is the Op Ed, the editorial you
20 wrote to The Seattle Times. Do you recall the state's
21 attorney asked you some questions about that?

22 A. Yes.

23 Q. And you recall your answers were along the
24 lines of your use of dramatic language to light a fire,
25 correct?

1 A. Yes.

2 Q. Would you light a fire because fixing the
3 education system in our state is important?

4 A. Yes.

5 Q. Were you lighting a fire because it's
6 crucial?

7 A. Yes.

8 Q. Did you say anything in this article that was
9 false?

10 A. No.

11 Q. The state's attorney asked you some questions
12 about, there was a letter you wrote to Rosemary
13 McAuliffe, do you remember, about the Task Force report
14 to the Washington State Board of Education supporting
15 progress, generally? Do you remember those questions?

16 A. Yes.

17 Q. And she asked you some questions about adding
18 more money to the system.

19 Do you recall that?

20 A. Yes.

21 Q. Is one way to add more money to the system,
22 the state simply paying for the operations and
23 instructional work that local levies now pay for?

24 A. I would -- if I'm going to answer a question
25 about this letter, I think I should look at it.

1 Q. Okay. Well, let me just ask the question
2 divorced from the letter.

3 A. Okay.

4 Q. Is one way that the state can add more money
5 to our education system is to have the state simply pay
6 for the operational and instructional work that schools
7 certainly pay for with local levies?

8 A. That -- yes.

9 Q. And would that overload the system for the
10 state to actually start paying what the local levies
11 pay for?

12 MS. BASHAW: Objection, lack of foundation.
13 Overload the state. I mean, that's the Legislature's
14 determination.

15 MR. AHEARNE: All right. I will go back.

16 BY MR. AHEARNE:

17 Q. At the end of Ms. Bashaw's question, she
18 asked you questions about overloading the system. Do
19 you recall that?

20 A. Yes.

21 Q. Would the state simply paying for the
22 operations and construction and educational work that
23 schools currently pay for with local levies, would the
24 state infusing that money overload the system?

25 A. I think -- I just want to say, the overload

1 the system comment -- or part of your question is a
2 complicated one, and the -- what I was -- the
3 distinctions I was trying to make, in terms of phasing,
4 the questions were along the lines of the
5 appropriateness -- did 2261 contemplate phasing and did
6 I think that was appropriate, and, I said yes. I do
7 think it's appropriate in some cases when you have
8 to -- when we're adding requirements and they require
9 some -- a number of different actions to be taken in
10 order to get -- put in place the system such that the
11 student would have a quality learning experience.

12 And so, I do think that there are costs from
13 my knowledge -- I'm not a financial expert -- but from
14 my knowledge, there are things that are being paid for
15 by local levies that appear to be of an operating-cost
16 nature that are -- it's simply a matter, really --
17 they're already -- it's a cost that's already being
18 incurred. The capacity is already there in a school.
19 So it's a matter of who's paying the bill.

20 So I would not have a concern that -- that
21 the system wasn't ready for that item because the
22 system already has the items. It's just a question of
23 who's paying for the item.

24 So in those instances I think it would be
25 helpful for -- and I think 2261, for example, calls out

1 transportation as a good example of such a thing. And
2 I think it's a place in the law where the -- there's a
3 date that's nailed down in the law, that the state
4 would begin a new method of funding transportation by a
5 certain date. Just as an example.

6 Q. And if I understood your answer, though,
7 correctly, your concern about overloading the system
8 does not apply to the state starting to pay what local
9 levies now pay for with respect to basics.

10 A. I mean, the base point I think you're making
11 I agree with, that, to the extent a local -- to the
12 extent the state is not paying for an operating cost
13 that's -- that we could -- a lay person would say is a
14 basic cost, like electricity or a bus, the gas for the
15 bus, to the extent -- to the extent that it's needed,
16 to the extent the state is not paying for it and a
17 local levy is picking it up, I would not have a concern
18 about system overload.

19 Q. Okay. And, in fact, in the '09-'11 biennium,
20 did we put more -- did the state put more money into
21 the K-12 system or take money out?

22 A. The state took money out.

23 Q. If I could ask you to turn to --

24 A. The state --

25 Q. -- trial --

1 A. -- however, funded basic education.

2 Q. And when you say basic education, you mean
3 those program funding formulas?

4 A. Correct. But, you know, it's not a -- to me,
5 that's an important distinction to make.

6 Q. And do the -- today, as we sit here today, do
7 these program funding formulas give all children in our
8 state an effective or realistic opportunity to learn
9 the knowledge and skills they need in today's society?

10 A. No.

11 Q. If I can please ask you to turn to Exhibit
12 1538, which is one of the exhibits the state's attorney
13 asked you about. Here.

14 A. 1538?

15 Q. Yes, ma'am.

16 And in Exhibit 1538 is a one-page -- it looks
17 like a flyer or something.

18 A. Yes.

19 Q. On CORE 24, correct?

20 A. Correct.

21 Q. If I understand your testimony correctly, you
22 said the CORE 24 would not be in place unless and until
23 it's funded, correct?

24 A. Correct.

25 Q. Would you tell the court when it is going to

1 be fully funded?

2 A. It will be funded when a number of conditions
3 are met. The Legislature -- the Board has to make a
4 recommendation by the -- by -- 2261 lays out a number
5 of steps.

6 The Board has to go back to the QEC with a
7 recommendation on phasing, and then we have to also
8 provide that to the Legislature, and then, presumably,
9 the Legislature -- with -- in terms of the QEC, the QEC
10 will take all these different things that need to be
11 funded as part of the new definition and put that in
12 their phasing and funding plan that the Legislature has
13 called for.

14 Q. And so --

15 A. And then -- and so it will be funded at some
16 point, hopefully sooner rather than later, but
17 before -- or no later than 2018.

18 Q. Okay. And what do you base your statement
19 that it will be funded no later than 2018 on?

20 A. Because the law is to be fully implemented by
21 2018, the new definition. And it -- and in the
22 provision of the law where the law enacts a new
23 definition of basic education, it, both in policy and
24 in operational terms, amend the definition to include
25 enough instructional time for the CORE 24 proposal to

1 move forward. But the policy language also mandates
2 that it -- that we're preparing students for post-
3 secondary -- success in post-secondary education
4 careers and citizenship.

5 So I feel like it's -- I really don't know
6 how else we could have written -- how else it could
7 have been written to create a stronger amendment to the
8 basic ed definition.

9 So if history is a guide that we will fund
10 what we say is basic education, which we have, that it
11 will be funded by 2018.

12 Q. Okay. And let me break this down, a few
13 things.

14 Talking about history as a guide. Has the
15 state ever fully funded the resources that are
16 necessary to equip all children with the acknowledge
17 and skills that are specified in the four paragraphs of
18 House Bill 1209, read with comprehension, apply core
19 concepts, et cetera?

20 A. No.

21 Q. Okay. And then when you were talking about
22 what the law calls for -- you're talking about 2261
23 calls for full implementation by 2018, correct?

24 A. Correct.

25 Q. And that was the law passed by the 2009

1 Legislature, correct?

2 A. That's correct?

3 Q. And if I recall your testimony correctly from
4 last time you were here, you testified that the 2010
5 Legislature doesn't have to do what the 2009
6 Legislature says. It could amend the law, correct?

7 A. It could.

8 Q. And the 2011 Legislature could amend the law,
9 correct?

10 A. Could.

11 Q. So could the '12, '13, '14, '15, '16, '17,
12 and even the '18 Legislature, correct?

13 A. They all could.

14 The distinction that I was -- I was trying to
15 make was that we can -- we can acknowledge -- I can
16 answer that -- you asked me have we -- has the state --
17 have we provided enough resources to meet the intent of
18 1209, and I can say I don't think we have.

19 But, at the same time, I think what we have
20 done is fund what we have called basic education, and
21 that's why I think 2261 is a powerful piece of
22 legislation for CORE 24's purposes because CORE 24 --
23 the opportunity to prepare students for post-secondary
24 success in getting the 24 credits, six periods a day
25 are all called out in a new definition of basic

1 education.

2 Q. And, again, when you say basic education as
3 being what the state has funded, you're talking about
4 that program of basic education?

5 A. Yes.

6 Q. Okay. When the state's attorney was asking
7 you questions about Exhibit 1538, and then there were
8 also some other charts, she was talking about how
9 whether it's possible for a student in the current 19
10 credit, or even if you're doing the 20 credit system,
11 to align the courses you take and your electives to
12 make it so you can meet the 15 specific HEC Board
13 requirements.

14 Do you remember that generally?

15 A. Yes.

16 Q. And for a student to do that, the math was
17 correct. You had to pretty carefully plot out what
18 courses you're taking when and how you use your
19 electives to be able to actually get a degree with the
20 19-hour credits, or even the 20-hour credits, that
21 satisfies the specific 15 hours that the HEC Board
22 requires; is that correct?

23 A. That's correct.

24 Q. And when a student starts planning that out,
25 they are at the end of 8th grade, correct, going into

1 freshman year?

2 A. If you're lucky.

3 Q. Okay. And do students know how to do that
4 plotting and planning -- and plotting like P-L-O-T-T --
5 in planning intuitively or does someone need to help
6 guide them through that?

7 A. I think most students need help with that,
8 and that's why concerns on that point are among many
9 that led us to this CORE 24 proposal.

10 Q. Is part of that, too, that would students
11 need -- if you're not -- if you have two educated
12 parents that knew the system, it's easier for you to
13 navigate that than, let's say, your parents who didn't
14 even graduate from high school, correct?

15 A. Correct.

16 Q. And was that an instance where some having
17 guidance counselors would actually help those students
18 navigate their way through the system?

19 A. Yes, it would.

20 Q. And in your -- assuming that you can plot out
21 you're elective that you'll need to actually meet the
22 15 HEC Board requirements, that's also assuming that
23 enough courses are offered, correct?

24 A. Correct.

25 Q. And so if you're in a school district that

1 offers, let's say, French every other year, you would
2 have to plan very carefully which years you were taking
3 which electives that fall in that target year to get
4 your two French electives, correct?

5 A. Correct.

6 Q. And how does it work out if you actually fail
7 a course then? So you've sort of blown one of your
8 electives, you failed it, and then you have to take it
9 again. Take it in school and a fifth year of high
10 school?

11 A. You would have to make it up somehow.

12 Q. With respect to -- I want to make sure I
13 understand part of your testimony correctly.

14 With respect to the 20 credits that are
15 required -- math credits -- there's now three math
16 credits that are required for the class of 2013,
17 correct?

18 A. Yes.

19 Q. Is there a requirement that it include a
20 senior math credit?

21 A. No.

22 Q. So you can satisfy the new state math
23 requirements by getting a freshmen, sophomore, junior
24 year math credit, correct?

25 A. Right. It's three years, and it's through

1 Algebra 2 is what we were trying to --

2 Q. Okay. And the HEC Board standards require
3 three math credits, but one of them does have to be a
4 senior year math credit, right?

5 A. Correct.

6 Q. If I can ask you to look at Trial Exhibit
7 1554, please. Is that that one?

8 A. Uh-huh.

9 Q. Do you have that in front of you?

10 A. Yes.

11 Q. And there's an e-mail that says, "Here is the
12 info which was gathered from 14 school district about a
13 year ago."

14 Do you see that?

15 A. I do.

16 Q. But do you recall which 14 school districts
17 those were?

18 A. I don't.

19 Q. Do you recall how they were selected at all?
20 Was it a random sample, or was it the 14 guys I know.
21 I mean, how --

22 A. The Superintendents' Association for the
23 state, they volunteer to help the Board as we were
24 wrestling with this question. We were trying to
25 understand what was going on with math achievement.

1 And so we wanted to know -- the state -- at least at
2 the time we were doing this -- wasn't collecting data
3 on course taking, so we could not easily ask that
4 question, which seemed like a very intuitive question
5 to ask, what classes are the kids taking and how does
6 what they take effect WASL passage.

7 So the Superintendents did a survey, and all
8 I can really tell you is, I'm sure that they would say
9 it was not scientific; however, the gentleman who
10 relayed the information to us said that it was a pretty
11 good cross-section of large and small, rural and urban,
12 so they felt pretty good that it was -- was probably a
13 fairly good picture of general trends.

14 Q. And that's the person you talked with from
15 the association. He was comfortable. He thought this
16 was a decent cross section?

17 A. Yeah. But, again, it would never hold up as,
18 you know, a statistically significant or, you know,
19 valid sample.

20 Q. Looking at Exhibit 124, please. That's the
21 final report. And I'll ask you to take a look at page
22 23, please.

23 A. Yes.

24 Q. And state's attorney asked you some questions
25 about accountability --

1 A. Yes.

2 Q. -- et cetera?

3 Is one of the thoughts behind the
4 accountability being proposed by the State Board, that
5 there should be a statewide accountability system to
6 monitor and evaluate the level of learning that occurs
7 in individual schools and individual school districts?

8 A. I guess I could say that.

9 Q. And is another part that there should be some
10 system to intervene in schools and school districts in
11 which significant numbers of students persistently
12 failed to learn the state standards?

13 A. Yes.

14 Q. If I can ask you to look at Trial Exhibit
15 133, please. Is that in that notebook?

16 Do you have Trial Exhibit 133 in front of
17 you?

18 A. Yes.

19 Q. And this is House Bill 1209 that we talked
20 about before?

21 A. Correct.

22 Q. If I could ask you to look at page nine,
23 please. And it actually says p.9 at the bottom.

24 A. Page 9?

25 Q. Yes. At the bottom it says p.9.

1 A. Yes.

2 Q. Okay. Starting on line 26, it says, "By
3 December 1, 1998, recommend that the Legislature,
4 Governor, State Board of Education, and Superintendent
5 of Public Instruction," and then a little I. "A
6 statewide accountable system to monitor and evaluate
7 accurately and fairly the level of learning occurring
8 in individual schools and school districts."

9 Do you see that?

10 A. Yes.

11 Q. Was that statewide accountability system
12 implemented by 1998?

13 A. I don't know. I really would need to review
14 this whole -- I don't -- I don't know.

15 Q. Is that the same kind of accountability
16 system, or at least the same concept, that's being
17 talked about in the Basic Ed Task Force Report?

18 MS. BASHAW: Objection. Calls --

19 THE WITNESS: Yes.

20 MS. BASHAW: -- for a legal conclusion.

21 THE COURT: I'm sorry. Ms. Bashaw?

22 MS. BASHAW: Calls for a legal conclusion.

23 THE COURT: Well, I think she's comparing
24 accountability systems in two different --

25 MR. AHEARNE: I can re-ask the question, Your

1 Honor.

2 THE COURT: All right. You can re-ask.

3 BY MR. AHEARNE:

4 Q. In the final report of the Task Force, the
5 2009 report, which is Trial Exhibit 124, there's some
6 recommendations about accountability systems, correct?

7 A. Yes.

8 Q. And part of that is to monitor and evaluate
9 the learning that's occurring in the -- actually
10 occurring in the schools, correct?

11 A. Yes, in the broad sense, yes.

12 Q. In the broad sense.

13 A. Yes.

14 Q. And when you say in the broad sense, this one
15 part of House Bill 1209 is also talking about the
16 statewide accountability system to monitor and evaluate
17 accurate and fairly the level of learning occurring in
18 individual schools and school districts, correct, in
19 the broad sense?

20 A. I have not read this section of 1209 in a
21 while.

22 Q. Okay.

23 A. And I just -- I really feel like I need to --
24 if you want me to try and answer, I can, but I've got
25 to read it over again. I'm just -- I feel like I'm

1 reading something completely out of --

2 Q. Please do.

3 A. I don't know the concept, so --

4 Q. Please do.

5 MS. BASHAW: Again, Your Honor, to the extent
6 now that counsel is asking this witness to opine as to
7 exactly what 1209 means, it's calling for a legal
8 conclusion.

9 MR. AHEARNE: Actually, I'm asking whether
10 her idea or her concept of what the State Board of
11 Education was proposing as far as an accountability
12 system for measuring student performance, is the same
13 kind of concept that's been talked about in 1209 on
14 implementing a statewide accountability system to
15 monitor and evaluate student performance.

16 THE COURT: The question is appropriate. I
17 don't think it calls for a legal conclusion. This
18 witness is fairly familiar with and has testified about
19 2261, what's in that bill, and what the Board is going
20 to do to implement the provisions of the bill. I think
21 she has qualified the state with what was in prior
22 legislation and essentially compared the two.

23 The objection is overruled.

24 THE WITNESS: (Reading.) So I guess one
25 observation I have is that in the -- 1209 was setting

1 in motion the statewide assessment system, and so --
2 and, clearly, that is a foundational piece of any kind
3 of accountability. You have to have information upon
4 which to evaluate your system's performance. And so
5 1209 was setting that in motion.

6 BY MR. AHEARNE:

7 Q. If I could interrupt for a second.

8 It's your understanding that the WASL
9 assessment is the performance measure that then is set
10 up pursuant to 1209?

11 A. Yes. And it has been -- it's also been used
12 for -- in the case of 10th graders, then high school
13 students as a graduation -- as a exit test as well.

14 But, I think probably the difference in what
15 we're trying to put forth in our Board's work on
16 accountability now, this many years later, is a
17 consequence of -- to have a system that takes that
18 assessment information gathered by school and district
19 and evaluates it, not for purposes of doing anything in
20 particular, vis-a-vis an individual student, but by --
21 but for purposes of looking at the quality of education
22 offered by a school and by certain -- by districts.

23 So, it's -- it's -- and -- and then to
24 develop a set of action steps that the state would
25 take, depending on the information that the assessment

1 data conveys to you.

2 So it does seem to me a little bit different.

3 Q. Okay. And it's then part of the proposal in
4 2009 then that the state develop some sort of action
5 step that it could take for persistently failing school
6 districts?

7 A. Correct.

8 Q. Okay. If you could look, please, at page 10
9 of Trial Exhibit 133, which is House Bill 1209, and
10 lines four through six.

11 Another part talks about, "A system that
12 intervene in schools and school districts with a
13 significant number of the students who persistently
14 fail to learn the Essential Academic Learning
15 Requirements."

16 Do you see that?

17 A. What page are you on?

18 Q. Page 10, lines four through six.

19 A. Yes, I do see that. I think the other thing
20 that -- if I'm remembering correctly. There's a lot of
21 reference in these pages to the commission, and I
22 believe the state has had a number of different
23 oversight bodies over this period of time, the
24 Commission on Student Learning, then the A+
25 Commission. So, I'm assuming that the duties were to

1 come up with the required action steps including taking
2 action in the face of chronic underperformance, was a
3 duty, as I understand it, of the A+ Commission. And
4 then the A+ Commission made recommendations to the
5 Legislature and they were not adopted.

6 And then the State Board -- in the chronology
7 of this, I can't give you exact, but the A+ Commission
8 did work, made some recommendations, was not adopted,
9 and then other things were occurring at the same time,
10 and that, then Governor Locke, proposed a reconstitution
11 of the State Board of Education, took some powers away
12 from the then State Board of Education, gave it some
13 new powers, and including doing work to make
14 recommendations on a stronger accountability system,
15 including the point you're making about taking a set of
16 actions that the state would take to address chronic
17 underperformance.

18 Q. Okay. If I understood your testimony then
19 correctly, without getting specific on the dates,
20 because I understand that's a while ago,
21 recommendations were made and the Legislature didn't
22 adopt them. Different things were done instead.

23 A. I don't know about different things were
24 done, but --

25 Q. The recommendations at least with respect

1 to --

2 A. It looks like you're pointing out to me that
3 there had been a charge given to, I assume it was, the
4 A+ Commission. I'm not --

5 Q. Even putting aside who it was to go -- there
6 was a statutory charge --

7 A. And my understanding is they -- they did
8 their work. They did work. They made
9 recommendations. I can't -- I don't know if they were
10 the best recommendations or not, but they made
11 recommendations pursuant to this that were not
12 adopted. And then, as part of reconstituting the State
13 Board, we were giving --

14 Q. Okay.

15 A. -- given the duty to come up with a set -- a
16 stronger systems for accountability.

17 Q. Okay. And if I can just -- this is the last
18 question on this exhibit. If I can ask you to look at
19 lines 13 and 14 where it says, "It is the intent of the
20 Legislature to begin implementation of programs in this
21 Section 3H on September 1 of 2000."

22 Do you see that?

23 A. I'm sorry. Tell me one more time where it
24 is.

25 Q. Sure. Around lines 13 and 14, and what we've

1 been talking about so far are all part of Section 3H.

2 A. What page?

3 Q. Lines 13 and 14.

4 A. And what page?

5 Q. On page 10. Lines 13 and 14 says, "It is the
6 intent of the Legislature to begin implementation of
7 programs in this Section 3H, on September 1, 2000."

8 Do you see that?

9 A. Yes, I see it.

10 Q. If I understand your testimony correctly, at
11 least with respect to the system that intervenes in
12 schools that are persistently failing, that wasn't
13 implemented by 2000; is that correct?

14 A. That's correct, if that's what that refers
15 to.

16 Q. Okay. If I can ask you to please turn to
17 Exhibit 228, please. Oh, it's in this one here. Too
18 many notebooks.

19 Page two the state's attorney had asked you
20 some questions about the meaningful high school diploma
21 that's being referenced there.

22 A. Yes.

23 Q. And if I understood your answer correctly,
24 you said, to make it -- it's not simply an indication
25 that you made it through. You have to have mastered

1 knowledge and skills; is that correct?

2 A. Correct.

3 Q. And those are the knowledge and skills in the
4 state standards?

5 A. More than that, but, yes, including that.

6 Q. But at least the state standards that 1209
7 and the Essential Academic Learning Requirements?

8 A. That we would -- we want to see mastery at
9 certain -- at a certain level at least.

10 Q. And is that mastery of those knowledge and
11 skills, at least in the Board's opinion, necessary for
12 a high school diploma to be meaningful in today's
13 world?

14 A. Yes.

15 Q. The state's attorney asked -- on page 11.
16 The state's attorney had asked you some questions about
17 a sentence that says, "The majority of states, 34 or 67
18 percent, do not require world languages of all
19 students."

20 Do you recall that?

21 A. Yes.

22 Q. And you made a comment that in some ways it
23 surprises you and in some ways it doesn't.

24 How does it surprise you?

25 And I'll give you a heads up. My other

1 question's going to how does it not.

2 A. Why am I not surprised.

3 I -- it doesn't surprise me because the
4 United States is a little -- still a little insular in
5 its view of the need to understand other cultures and
6 be proficient in other languages, vis-a-vis, other
7 countries. And so it didn't -- and I think we -- to
8 the extent we didn't have that requirement, it didn't
9 surprise me that a lot of other states didn't have the
10 requirement.

11 Q. Are you familiar with, from the Washington
12 Learns process, the idea of having global challenge
13 states?

14 A. Yes.

15 Q. Is part of that thinking that Washington
16 depends on the international economy more than other
17 states?

18 A. Yes.

19 Q. Now, with respect to why it would surprise
20 you, why would it surprise you that only 34 of the 50
21 states have language learning requirements?

22 A. Just sort of the flip side, which is that
23 we're in an incredibly globalized economy. Our
24 employees are competing internationally with, you know,
25 countries all over the world. We have a large and

1 growing immigrant population. We have just a
2 tremendous amount of reasons why we should value and
3 promote the gaining of world language proficiency.

4 Q. And as Chair of the State Board of Education,
5 do you believe knowledge and world language -- world
6 language proficiency is important to be able -- being
7 able to successfully compete in today's world?

8 A. I think there's several things on that.

9 Taking two world language courses in high
10 school is not going to make you proficient. I think
11 it's -- at least it's a starting point. It provides
12 opportunity. It opens the door to a line of study and
13 an area that's very valuable for a well-rounded
14 student. It is also a requirement of the HEC Board, so
15 whether we like it or not, our students will not be
16 successful applicants to a four-year university in our
17 state if they don't, at least, be able to check the box
18 of having two years of world language.

19 So that was also an important consideration
20 for our work.

21 Q. Okay. Putting aside then my comment about
22 the proficiency, does the State Board believe that at
23 least having an awareness of foreign language, the two
24 years of taking foreign language in high school, is
25 that important to a child's ability to successfully

1 compete in today's world economy?

2 A. It is. It's very important, and I'll just
3 say the only caveat is, under CORE 24, we do allow for
4 a student, pursuant to their High School and Beyond
5 Plan, if they are clear about what they want to do post
6 high school, and they -- and what they want to do
7 doesn't require any foreign language knowledge, then we
8 would allow them to waive that.

9 But that would be because they want to do --
10 they've thought through what they want to do, and those
11 courses wouldn't help them advance toward that
12 objective.

13 With that exception, then I would say yes.

14 Q. Okay. Then you mentioned the High School and
15 Beyond Plan. That's another thing that the state's
16 attorney asked you about with respect to this exhibit.

17 The High School and Beyond Plan requirements
18 started in 2008; is that right?

19 A. I think that's right.

20 Q. But I take it from your testimony that you,
21 at least as Chair of the State Board of Education,
22 believe that it is important to student's success in
23 school?

24 A. In our work on CORE 24, in addition to the
25 call for higher number of credits, we also are

1 advocating for a stronger guidance system.

2 So I don't know that -- and I'll just say,
3 the plan kind of is the operationalizing of those
4 policy objectives, or those policy considerations. We
5 think kids need stronger guidance. They need it
6 starting in middle school because the courses they take
7 are -- from that time forward, they are shaping,
8 determining what options are open to them going
9 forward. So we think strong guidance is really
10 critical.

11 Q. As part of, then, developing this High School
12 and Beyond Plan?

13 A. The High School and Beyond Plan is --
14 essentially, it will be a document that is, hopefully,
15 a record of their interactions. It will reflect that
16 level of heightened guidance when this is implemented
17 properly.

18 Q. Okay. And if I understand correctly, this
19 is -- this is a requirement that started in 2008,
20 correct?

21 A. It exists -- it exists right now. It is our
22 observation right now is that it is -- some school --
23 in some schools, it is taken very seriously and it is
24 a -- there is a robust guidance system that does begin
25 in middle school. It is taken -- it is a -- trying to

1 think what word. It is taken very seriously. And so
2 when you -- when you see it, it actually -- and if you
3 asked a student about it, they would -- they would say
4 that it was a document that really reflects a lot of
5 thinking on their part and interaction with various
6 adults in their -- in their life that are trying to
7 help them prepare and make decisions.

8 That it looks -- and in a lot of other cases,
9 it's a checklist. It is just -- it's a checklist of
10 what courses the kids can take, vis-a-vis a set of
11 requirements from that school district. And it isn't
12 really -- there's not much of a guidance system because
13 there's such a minimal -- we don't have very many
14 guidance counselors and schools haven't, in some cases,
15 prioritized guidance for all kinds of reasons.

16 Q. Okay. So if I understand, some school
17 districts, they don't put a lot of time and resources
18 to it, so it's more exhaustive than in other school
19 districts.

20 A. That's right.

21 Q. Okay. When this began in 2008, is this a
22 requirement that was made by the state?

23 A. Yes.

24 Q. And can you tell me what kind of additional
25 funding the state provided in order to allow school

1 districts to have the resources to implement this new
2 requirement?

3 A. I don't think that any resources were
4 explicitly tied to it. The state did -- and I don't
5 have the numbers. The state did put a lot of -- make
6 grants available for a guidance system that's called
7 Navigation 101 that a lot of school districts have
8 adopted, that the state has funded to support teachers
9 and schools getting trained on that methodology.

10 But I don't -- as far as I know, no -- no
11 explicit tie was made between adding the High School
12 and Beyond Plan and money for that exact thing.

13 Q. Okay. The state's attorney asked you some
14 questions about the Form 1497.

15 Do you recall those?

16 A. Yes.

17 Q. Okay. If I can ask you to please turn to
18 Exhibit 1080.

19 Trial Exhibit 1080, this is a letter -- it
20 looks like a stamped signature from you to the Issaquah
21 School District and then several 1497 forms behind it?

22 A. That's correct.

23 MR. AHEARNE: Your Honor, we would move to
24 admit Trial Exhibit 1080.

25 THE COURT: Exhibit 1080 is offered.

1 MS. BASHAW: No objection.

2 THE COURT: Exhibit 1080 is admitted

3 EXHIBIT ADMITTED

4 BY MR. AHEARNE:

5 Q. If I can ask you to please look at the first
6 paragraph of your letter when you state, "The State
7 Board of Education has reviewed the recommendations
8 relative to certification in school district compliance
9 with basic education allocation entitlement
10 requirements."

11 You see that?

12 A. I do.

13 Q. Are those basic education allocation
14 entitlement requirements the program requirements that
15 are ticked off on the 1497?

16 A. Yes.

17 Q. And if I could ask to you look at the second
18 paragraph when you say, "As a result of this review,
19 the State Board of Education has certified your school
20 district as in compliance with these requirements."

21 Now, the "these requirements" were the same
22 basic education program requirements?

23 A. Yes.

24 Q. And then where it says, "This action is based
25 upon the information submitted in your affidavit of

1 compliance Form, OSPI 1497, and related documents in
2 and information."

3 Do you see that?

4 A. Yes.

5 Q. Do I understand correctly that the
6 certification by the Board of Education that, in this
7 case Issaquah, has complied with the basic education
8 program requirements is from that Form 1497?

9 A. Yes.

10 Q. And does that Form 1497 confirm one way or
11 the other that the students in the Issaquah School
12 District are being equipped with the knowledge and
13 skills and state standards?

14 A. No.

15 Q. Does it certify one way or the other whether
16 all the students in the Issaquah School District are
17 being provided an effective or realistic opportunity to
18 learn the knowledge and skills and state standards?

19 A. No.

20 Q. If I could ask you to turn to, please, Trial
21 Exhibit 230. I'll trade you. It should be in this one
22 right here.

23 And this is one of the PowerPoints from the
24 State Board of Education that the state's attorney had
25 asked you some questions about, correct?

1 A. Correct.

2 Q. If I can ask you to turn to slide 46,
3 please.

4 A. Yes.

5 Q. And the state's attorney had asked you some
6 questions about the third bullet where it says, "The
7 committee might consider adding a line to Form 1497 of
8 minimum basic education compliance, district high
9 schools meet all state minimum graduation --"

10 THE COURT: Mr. Ahearne, you're --

11 MR. AHEARNE: I know. I'm sorry. I'm
12 reading too fast.

13 THE COURT: If you want it part of the
14 record, you've got to --

15 MR. AHEARNE: Slow down.

16 BY MR. AHEARNE:

17 Q. Under the third bullet where it says, "The
18 committee might consider adding a line to Form 1497,"
19 do you see that?

20 A. Yes.

21 Q. And it refers to the "District high schools
22 meet all state minimum graduation requirements."

23 A. Yes.

24 Q. And that's the line that then was added to
25 the more recent version of the 1497, correct?

1 A. Yes, that and other sentence.

2 Q. Okay. Is that additional check box on Form
3 1497, is that part of the basic ed program requirements
4 or information that the State Board added because the
5 State Board wanted that information?

6 A. I guess I don't really know -- I mean,
7 clearly, the State Board wanted the information, but I
8 think, as far as I know, the minimum graduation
9 requirements would be considered part of the basic ed
10 program requirements.

11 Q. Okay. Okay. If I can ask you to turn to
12 page 16, please. And there's a discussion of mode
13 versus median versus means.

14 Do you see that?

15 A. Yes.

16 Q. And there's a quote, "If you have one hand on
17 the stove and the other on the refrigerator, on
18 average, you're comfortable."

19 Do you see that? Could you explain how
20 that -- what's the point there on how it relates to
21 mode versus medium versus means when you're looking at
22 all this data?

23 A. I'm not really sure what point she was trying
24 to make, honestly.

25 Q. It was a great quote though.

1 A. It was.

2 Q. And then the last thing on page 50,
3 Ms. Bashaw brought this up. This slide presentation.
4 This is where I had asked you earlier about
5 the quote, "All who have mentated on the art of
6 governing mankind have been convinced that the fate of
7 the empire depends on the education of youth," from
8 Aristotle.

9 Do you see that?

10 A. I do.

11 Q. Is that the -- does the State Board of
12 Education believe that that's true?

13 A. I can't answer that question. I mean, I
14 believe it's true.

15 Q. Fair enough. If I can ask you to please turn
16 to Exhibit 235, which is another PowerPoint the state's
17 attorney asked you about.

18 If I can ask you to turn to what's got the
19 little Bates number, the last two digits are 24, the
20 chart with all the states?

21 A. Yes.

22 Q. And from the State Board of Education's
23 perspective, why does it matter where Washington ranks
24 among the other states with respect to hours required
25 to graduate?

1 A. Well, I think we just -- it's part of the
2 thought process, I guess, of trying to understand that
3 we're not in a -- we have to take our environment into
4 account in a broad sense. So we're trying to take the
5 economy into account. We're trying to take job
6 prospects of graduates into account. What do they need
7 in terms of a good education.

8 So it is a good point of reference for the
9 Board to look at how we compare to other states,
10 because, you know, we live in a -- not just a national
11 economy, but a global economy, and if we're not even
12 affording the same educational opportunities as our --
13 you know, other United States, it's -- it's a point --
14 at a minimum, it's a point worth noting that it may not
15 be, you know, the only thing. I mean, increasingly,
16 we're trying to look also at world -- at world -- you
17 know, at other countries' education levels because
18 that's -- that's the world we live in. That we will --
19 our people will be competing for employment
20 opportunities and interacting in a world that's much
21 more international. People are moving much more freely
22 between countries. And, like you pointed out, you
23 know, we're -- we are an extremely trade dependent
24 state. So it's just a point of reference.

25 Q. Okay. And when we're talking about other

1 states, are you aware of any other state that has a
2 constitutional provision regarding paramount duty or
3 education that's stronger than Washington's?

4 A. No.

5 Q. No. And the state's attorney asked you some
6 questions about NAEP scores.

7 A. Yes.

8 Q. Does the NAEP test the Washington Essential
9 Academic Learning Requirements?

10 A. Does it --

11 Q. Tests the Washington Essential Academic
12 Learning Requirements?

13 A. No, it does not.

14 Q. And the state's attorney had also noted that
15 Massachusetts has no graduation requirements and, yet,
16 they do relatively well.

17 Doesn't that show that graduation
18 requirements really don't matter?

19 A. I think it -- you know, the point is -- it's
20 an interesting observation because, perhaps -- clearly,
21 Massachusetts has achieved really fantastic success and
22 they have not relied on the use of minimum state
23 mandated graduation requirements.

24 In order to be intelligent though in an
25 answer, I'd have to understand a lot about

1 Massachusetts' system. Where does their funding
2 predominantly come from. A lot of states, the funding
3 mostly comes from the local community, I mean, states
4 are really different one from the other.

5 What we shouldn't take from this is that
6 Massachusetts somehow doesn't have high expectations
7 for its system, because the opposite is true. As a
8 system, it is incredibly highly regarded and it is very
9 high performing.

10 Q. Do you know if it's highly funded?

11 A. I do know that it is highly funded. I also
12 know that it's not the only ingredient to success.

13 THE COURT: Mr. Ahearne, we're at the
14 afternoon recess at this time.

15 We'll take our recess and resume in 15
16 minutes and continue with Ms. Ryan's testimony at that
17 time.

18 Court is in recess.

19 (Whereupon a recess was taken and there was a
20 change in court reporters.)

21 --oOo--

22

23

24

25

1 REPORTER'S CERTIFICATE

2

3 STATE OF WASHINGTON)
) SS:
4 COUNTY OF KING)

5

6 I, CYNTHIA A. KENNEDY, an official reporter of
7 the State of Washington, was appointed an official
8 court reporter in the Superior Court of the State of
9 Washington, County of King, on April 17, 2006, do
10 hereby certify that the foregoing proceedings were
11 reported by me in stenotype at the time and place
12 herein set forth and were thereafter transcribed by
13 computer-aided transcription under my supervision and
14 that the same is a true and correct transcription of my
15 stenotype notes so taken.

16 I further certify that I am not employed by,
17 related to, nor of counsel for any of the parties named
18 herein, nor otherwise interested in the outcome of this
19 action.

20

21 Dated: _____

22

23

24

OFFICIAL COURT REPORTER

25